

HM 8577

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Federal Communications Commission
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May 3, 1995

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

DOCKET FILE COPY ORIGINAL

Thomas Tomlinson
Planning Director
City of Juan Capistrano
32400 Paseo Adelanto
San Juan Capistrano, California 92675

Re: Cellular Telecommunications Industry Association's Petition to
Preempt State and Local Zoning Regulations

Dear Mr. Tomlinson:

Thank you very much for your letter about the petition filed by the Cellular Telecommunications Industry Association (CTIA). This petition asks the Commission to begin a rule making proceeding to preempt state and local regulation of tower siting for commercial mobile radio service providers, such as cellular and personal communications service (PCS) companies. I am very interested in this issue, and welcomed the opportunity to hear your thoughts on it.

I certainly understand your concerns about the CTIA petition and its impact on the role of local jurisdictions in the cell siting process. Traditionally, cell siting issues are handled at the local level. By and large, this situation has been appropriate, given that zoning and land use issues involve uniquely local concerns, such as aesthetics and compliance with local building codes or other health and safety codes. I believe local authorities should continue to play a key role in these decisions.

However, as the demand for sites for wireless carriers continues to mushroom, I am also concerned about the ability of wireless providers to build out their networks without undue delay. There are many benefits to having national or regional wireless communications systems -- emergency communication abilities are enhanced, and people use wireless communications to become more efficient and productive. Further, new PCS licensees are paying the U.S. treasury billions of dollars for their licenses, which are regional and national in nature. I think it's fair for the federal government to ensure that these licensees are able to build their facilities throughout their service areas in a timely fashion. Moreover, some carriers complain that some localities may like to put a moratorium on all wireless cell sites in

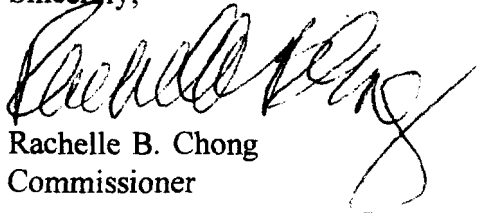
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certain geographic areas. For this reason, I believe the Commission also has an important role to play in this area to ensure ubiquitous and broad coverage without undue delay.

Having said that, I have not yet made any decisions about the CTIA petition. I believe that the Commission must balance the federal interest in ensuring the development of a competitive, efficient mobile services infrastructure against the legitimate interests of local governments in regulating zoning and land use matters. I am open to considering all options available to the Commission to strike the appropriate balance, and hope that you will work with us to find an acceptable solution for both our concerns.

I appreciate your taking the time to share your concerns with me. I will certainly keep them in mind as we consider the CTIA petition.

Sincerely,

A handwritten signature in black ink, appearing to read "Rachelle B. Chong", with a long, sweeping flourish extending from the end of the name.

Rachelle B. Chong
Commissioner



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COMMISSIONER
RACHELLE B. CHONG

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CITY MANAGER
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April 20, 1995

Rachelle Chong, Commissioner
Federal Communications Commission
1919 "M" Street, N.W.
Washington, D.C. 20036

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Subject: Petition for Rule Making of the Cellular Telecommunications Industry Association (CTIA) for Preemption of State and Local Jurisdiction over Siting Cellular Telephone Facilities (Rule Making No. 8577).

Dear Ms. Chong:

We have recently been made aware of the subject petition by the Cellular Telecommunications Industry Association (CTIA) to preempt State and local jurisdiction over the siting of cellular telephone infrastructure. Ostensibly, the "CTIA" cites local interference and delays resulting in additional costs as the basis for the proposed rule making. The claims of the "CTIA" are without merit or basis, and we request the support of the Federal Communications Commission in opposing this ill-conceived rule. The reasons for opposing this proposed rule include:

1. From recent past experience, the Cellular Telecommunications Industry has clearly demonstrated disregard of State law. Preemption would essentially eliminate any public interest oversight of such facilities.
2. Communities have a legitimate compelling interest in managing the land use issues associated with cellular telephone infrastructure, including public health and aesthetics.
3. Local jurisdictions, in most cases, approve or conditional approve discretionary applications for such facilities and seek to assure that the negative effects of such facilities are minimized.
4. The current process provides an appropriate and effective means for assuring that the Cellular Telecommunications Industry addresses local public interest concerns.

We are aware that both Los Angeles Cellular Telephone Company (LACTC) and GTE Mobilenet have been subject to fines of several hundreds of thousands dollars for violations of current laws, in spite of State and local oversight. If cellular telephone companies have violated existing law

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under such circumstances, how likely are they to comply with any regulation imposed by a Federal agency located thousands of miles away. State and local agencies are in the most appropriate position to effectively manage siting cellular telephone facilities. Preempting local control would essentially grant cellular telephone companies a "blank check" to proceed without any local consideration.

Communities have a legitimate compelling interest in managing the land use issues associated with cellular telephone infrastructure, including public health and aesthetics. Cellular towers and repeater stations can result in significant detrimental visual impacts. Local agencies, through familiarity with local geography and conditions, have the ability to identify alternate siting approaches which meet both the agencies public concerns and the cellular telephone company's needs. Each community differs in terms of physical setting and issues of importance. Our City is nestled in valleys formed by surrounding coastal hills. Visual quality of the community is important and both our General Plan and Zoning Ordinance protect "major ridgelines" from development. If preemption were granted, the City's land use planning efforts could be seriously compromised.

Local jurisdictions, in most cases, approve or conditional approve discretionary applications for such facilities and seek to assure that the negative effects of such facilities are minimized. Our City has previously received and processed two conditional use permits for communications facilities. In both cases, the City conditionally approved those applications to assure they are consistent with the goals and policies of the General Plan.

The current process provides an appropriate and effective means for assuring that the Cellular Telecommunications Industry addresses local public interest concerns. If cellular companies are not satisfied with a Planning Commission's actions or conditions, they may appeal to the City Council. Appeals in our City must be heard and acted on within sixty (60) days of submission. If not satisfied with the City Council, cellular companies may seek adjudication through the appropriate courts.

The only conceivable reason for the Cellular Telecommunications Industry request is economic in that the local review process represents a potential cost-cutting and profit margin-raising strategy. We think such a perspective is terribly short-sighted. If the Cellular Telecommunications Industry would secure preemption of State and local control, they will most likely find themselves expending several fold the time and resources dealing with civil actions by cities and property owners adversely affected by their siting proposals. An important question presented by their proposal concerns environmental review. Who will ensure that the provisions of the California Environmental Quality Act (CEQA) are satisfied?

We appreciate your support in opposing this ill-conceived rule and would be glad to discuss it with you further. Should you require any information, please do not hesitate to call me at (714) 443-6325.

Sincerely,

**Thomas Tomlinson,
Planning Director**

TT:WR:hs

cc: **George Scarborough, City Manager
Dick Bobertz, Planning Manager
William Ramsey, AICP, Senior Planner
California League of Cities**